

# EXHIBIT 9

October 24, 2014

VIA E-MAIL ONLY <MMILLER@HOLLANDHART.COM>

Mark A. Miller  
**Holland & Hart LLP**  
222 South Main Street, Suite 2200  
Salt Lake City, Utah 84101

Re: *Petter Investments, Inc. d/b/a RIVEER v. Hydro Engineering, Inc. et al.*  
Case No. 2:14-CV-45-DB (D. Utah)

Dear Mark:

This letter responds to your attached e-mail to me from earlier today. It is disappointing that no one from your office could make themselves available for a telephone call today, or before next Wednesday. If you would just take five minutes at any convenient time, even over the weekend, please call me directly on my mobile line, 949.636.1391.

You state that you “did not see any urgency in the matter,” but I presume you now see it. The obvious urgency of our Motion—particularly given your unequivocal response that “Hydro does not agree and will not stipulate to an extension”—is that ***Hydro produced 10,316 pages of documents just days ago.*** Assuming Hydro confirms that its production of documents responsive to Riveer’s Document Request Nos. 1-57 (served May 16, 2014) is now—finally—complete, Riveer is left with only 24 working days to notice, prepare for and take its remaining depositions. Given that Hydro has noticed three depositions of its own, and we have a hearing on six motions scheduled for November 20, 2014, under no reasonable scenario could Riveer complete its deposition discovery by December 1, 2014. As you know, depositions require accommodating and coordinating the schedules of at least one witness and two counsel, they often require travel days, and in November the Thanksgiving holiday imposes additional scheduling constraints. As you know also, it would have made no sense for Riveer to take key depositions before Hydro completed its document production, not to mention while missing 10,316 pages of responsive documents.

Rather than scramble to complete Riveer’s necessary depositions by December 1<sup>st</sup>, the extension we propose would allow enough time to complete Riveer’s depositions (and

Stephen M. Lobbin t: 949.851.5000x105  
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Hydro's depositions) on an orderly, accommodating schedule. To clarify, assuming Hydro's document production is complete, Riveer does not anticipate needing any more time for written discovery (*e.g.*, document requests, interrogatories, or requests for admission). Rather, the extension is necessary only for Riveer to complete its depositions and third-party discovery (including document production from and depositions of third-parties). The main thrust of all of this remaining discovery (particularly beyond December 1, 2014) relates to Riveer's non-patent claims, which means it will not interfere with the claim construction process or motion practice under LPR 6.2. With these clarifications and specificity (as you requested), please let us know as soon as possible if Hydro would stipulate to a reasonable extension, as requested in our Motion.<sup>1</sup>

Finally, there are a few unresolved issues from our October 6, 2014 telephone call following my September 22, 2014 letter. As mentioned above, Hydro was to confirm that it has not withheld from its production any non-privileged documents (including e-mails) responsive to Riveer's Document Request Nos. 1-53. If necessary, Hydro was to suggest a procedure for searching Hydro's e-mails for responsive documents, if that has not been done completely. Also, Hydro was to produce a privilege log that includes all responsive but privileged documents from before the date this action was filed. Lastly, Hydro was to provide supplemental responses to Riveer's Interrogatory Nos. 8-9. Please update us as soon as possible on the status of these matters.

If you have any questions, please call me.

Sincerely,

THE ECLIPSE GROUP LLP

  
Stephen M. Lobbin

Enclosure (Miller e-mail)

cc: Mark W. Ford

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<sup>1</sup> If you really believe that "a phone call beforehand would have avoided a motion," then why did you not call me rather than "mov[ing] heaven and earth to put [an] opposition together"? Your behavior is inconsistent with your proposed logic. If you had simply called me, Hydro could have avoided whatever "fees and costs to oppose [the] motion" you reference. Moreover, rather than arguing about who should reimburse who for fees and costs, we would prefer simply to resolve the extension issue collegially so we can move forward toward completing discovery in an orderly manner.

**Stephen M. Lobbin**

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**To:** Mark Miller; Chris Hadley  
**Cc:** Brett Foster; Chris Broome; Mark W. Ford; rjacques@mabr.com  
**Subject:** RE: Riveer v. Hydro -- Discovery Issues  
**Attachments:** 141024-LTHydroReDiscovery.pdf

Mark—Please see attached letter, and please respond to my invitation to tone down the rhetoric and call me, anytime, on my mobile phone.

Best regards,

SML

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**From:** Mark Miller [mailto:MAMiller@hollandhart.com]  
**Sent:** Friday, October 24, 2014 8:42 AM  
**To:** Stephen M. Lobbin; Chris Hadley  
**Cc:** Brett Foster; Chris Broome; Mark W. Ford; rjacques@mabr.com  
**Subject:** RE: Riveer v. Hydro -- Discovery Issues

Steve,

The best I can do is Wednesday next week (maybe Tuesday; Wednesday is better). We were quite surprised with the short fuse you placed on this issue by filing the motion the day after your first email and the same day as our response. While we did not see any urgency in the matter, I moved heaven and earth to put our opposition together and file it on a very expedited basis in a good faith effort to reach a quick resolution despite no order from the Court requiring expedited briefing. Because of that, I now have to turn to the urgent matters in other cases that I put off to do so, and I will be under water for the next few days with those. Let's shoot for Wednesday. That is the best I can do.

In the meantime, given our good faith compliance with your request for expedited briefing, we would expect your reply to be on file by Monday or Tuesday at the latest. We would also appreciate a follow up email giving us a little more specificity concerning what it is you really need that would not require a wholesale extension of discovery. That would certainly make it easier to confer next week. If we can reach an agreement to avoid the Court having to spend time on the issue, that is great. That will also show that a phone call beforehand would have avoided a motion. But because you already forced Hydro to invest fees and costs to oppose your motion on an expedited basis, any agreement will have to include a reimbursement of Hydro's fees in preparing and filing the opposition.

Let me know when you want to talk on Wednesday.

Regards,

**Mark A. Miller**  
Partner  
801-799-5805 (direct)



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**From:** Stephen M. Lobbin [<mailto:sml@eclipsegrp.com>]  
**Sent:** Thursday, October 23, 2014 3:33 PM  
**To:** Chris Hadley; Mark Miller  
**Cc:** Brett Foster; Chris Broome; Mark W. Ford; [rjacques@mabr.com](mailto:rjacques@mabr.com); Stephen M. Lobbin  
**Subject:** RE: Riveer v. Hydro -- Discovery Issues

Chris—I see from your response brief filed today that your response below may not have been as unequivocal as I originally interpreted it. Do you and Mark have time for a call?

SML

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**From:** Chris Hadley [<mailto:CBHadley@hollandhart.com>]  
**Sent:** Wednesday, October 15, 2014 3:58 PM  
**To:** Stephen M. Lobbin; Mark Miller  
**Cc:** Brett Foster; Chris Broome; Mark W. Ford; [rjacques@mabr.com](mailto:rjacques@mabr.com); Robert P. Hart; Rebecca Meegan; Erin C. Meegan  
**Subject:** RE: Riveer v. Hydro -- Discovery Issues

Hi Steve,

Hydro will be producing supplemental document production by the end of the week.

Hydro does not agree and will not stipulate to an extension of the pre-claim construction discovery period. If you would like to discuss, please let us know when may work for a conference call.

Thanks, Chris

**Christopher B. Hadley**  
*Associate*  
Holland & Hart LLP  
222 S. Main Street, Suite 2200  
Salt Lake City, UT 84101  
Phone: (801) 799-5873  
Cell: (435) 659-4013  
E-mail: [cbhadley@hollandhart.com](mailto:cbhadley@hollandhart.com)



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**From:** Stephen M. Lobbin [<mailto:sml@eclipsegrp.com>]  
**Sent:** Wednesday, October 15, 2014 1:09 PM  
**To:** Chris Hadley; Mark Miller  
**Cc:** Brett Foster; Chris Broome; Mark W. Ford; [rjacques@mabr.com](mailto:rjacques@mabr.com); Robert P. Hart; Rebecca Meegan; Erin C. Meegan; Stephen M. Lobbin  
**Subject:** RE: Riveer v. Hydro -- Discovery Issues

Hi Mark/Chris,

Following up on our call from last week, please let me know any update on Hydro's additional and supplemental document production, as we discussed on our call.

Given that we are still completing document production, we would like to request an extension of the current fact discovery deadline. Attached is a proposed stipulation, in the same format you used last time when we agreed to your proposed extension and alignment of the briefing on your motions for summary judgment. Please get back to me with any edits/changes you'd like to make.

Best regards,

Stephen M. Lobbin



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**From:** Chris Hadley [<mailto:CBHadley@hollandhart.com>]

**Sent:** Monday, October 06, 2014 10:31 AM

**To:** Stephen M. Lobbin

**Cc:** Mark Miller; Brett Foster; Chris Broome; Mark W. Ford; [rjacques@mabr.com](mailto:rjacques@mabr.com); Robert P. Hart; Rebecca Meegan; Erin C. Meegan

**Subject:** RE: Riveer v. Hydro -- Discovery Issues

Ok, thanks Steve.

Chris

**Christopher B. Hadley**

*Associate*

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**From:** Stephen M. Lobbin [<mailto:sml@eclipsegrp.com>]  
**Sent:** Monday, October 06, 2014 10:38 AM  
**To:** Chris Hadley  
**Cc:** Mark Miller; Brett Foster; Chris Broome; Mark W. Ford; [rjacques@mabr.com](mailto:rjacques@mabr.com); Robert P. Hart; Rebecca Meegan; Erin C. Meegan; Stephen M. Lobbin  
**Subject:** RE: Riveer v. Hydro -- Discovery Issues

That time is fine, I'll call you then.

SML

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**From:** Chris Hadley [<mailto:CBHadley@hollandhart.com>]  
**Sent:** Monday, October 06, 2014 8:52 AM  
**To:** Stephen M. Lobbin  
**Cc:** Mark Miller; Brett Foster; Chris Broome; Mark W. Ford; [rjacques@mabr.com](mailto:rjacques@mabr.com); Robert P. Hart; Rebecca Meegan; Erin C. Meegan  
**Subject:** RE: Riveer v. Hydro -- Discovery Issues

Steve,

Are you available at 3:00 (MST) today? Also, we can discuss the Short Form Discovery Procedure during our call.

Thanks, Chris

**Christopher B. Hadley**

*Associate*

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Salt Lake City, UT 84101

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**From:** Stephen M. Lobbin [<mailto:sml@eclipsegrp.com>]  
**Sent:** Thursday, October 02, 2014 11:52 PM  
**To:** Chris Hadley  
**Cc:** Mark Miller; Brett Foster; Chris Broome; Mark W. Ford; [rjacques@mabr.com](mailto:rjacques@mabr.com); Robert P. Hart; Rebecca Meegan; Erin C. Meegan; Stephen M. Lobbin  
**Subject:** RE: Riveer v. Hydro -- Discovery Issues

Chris—Let's talk Monday, any time after 2:30pm your time; let me know. In the meantime, please confirm Hydro's consent to proceeding under the Court's "Short Form Discovery Motion Procedure," should a motion be necessary.

SML

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**From:** Chris Hadley [<mailto:CBHadley@hollandhart.com>]  
**Sent:** Thursday, October 02, 2014 6:59 PM  
**To:** Stephen M. Lobbin  
**Cc:** Mark Miller; Brett Foster; Chris Broome; Mark W. Ford; [rjacques@mabr.com](mailto:rjacques@mabr.com); Robert P. Hart; Rebecca Meegan; Erin C. Meegan  
**Subject:** RE: Riveer v. Hydro -- Discovery Issues

Steve,

Please see the attached correspondence.

Thanks, Chris

**Christopher B. Hadley**  
*Associate*  
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222 S. Main Street, Suite 2200  
Salt Lake City, UT 84101  
Phone: (801) 799-5873  
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**From:** Stephen M. Lobbin [<mailto:sml@eclipsegrp.com>]  
**Sent:** Wednesday, October 01, 2014 4:31 PM  
**To:** Chris Hadley  
**Cc:** Mark Miller; Brett Foster; Chris Broome; Mark W. Ford; [rjacques@mabr.com](mailto:rjacques@mabr.com); Robert P. Hart; Rebecca Meegan; Erin C. Meegan  
**Subject:** RE: Riveer v. Hydro -- Discovery Issues

Thanks Chris, how about 11am your time on Friday?

SML

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**From:** Chris Hadley [<mailto:CBHadley@hollandhart.com>]  
**Sent:** Tuesday, September 30, 2014 1:28 PM  
**To:** Stephen M. Lobbin  
**Cc:** Mark Miller; Brett Foster; Chris Broome; Mark W. Ford; [rjacques@mabr.com](mailto:rjacques@mabr.com); Robert P. Hart; Rebecca Meegan; Erin C. Meegan  
**Subject:** RE: Riveer v. Hydro -- Discovery Issues



Steve,

I write regarding your letter concerning alleged discovery deficiencies. Hydro is not able to meet and confer today as requested. Hydro has a summary judgment hearing in the other Riveer matter this afternoon. We are reviewing your letter and will be available to meet and confer on Friday, October 3rd. In the meantime, we will send a letter addressing your complaints with the hope that we can narrow the issues to discuss.

Please let me know when Friday works for your schedule or please propose an alternate time.

Thanks, Chris

**Christopher B. Hadley**

*Associate*

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**From:** Stephen M. Lobbin [<mailto:sml@eclipsegrp.com>]

**Sent:** Monday, September 22, 2014 11:30 AM

**To:** Chris Hadley

**Cc:** Mark Miller; Brett Foster; Chris Broome; Mark W. Ford; [rjacques@mabr.com](mailto:rjacques@mabr.com); Stephen M. Lobbin; Robert P. Hart; Rebecca Meegan; Erin C. Meegan

**Subject:** Riveer v. Hydro -- Discovery Issues

Dear Chris,

Please see attached correspondence re discovery, and please let us know when would be a good time to discuss over the phone or in person.

Best regards,

Stephen M. Lobbin



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